

EQUIPMENT MORTGAGE

SEP 25 1975 -2 50 PM

INTERSTATE COMMERCE COMMISSION

THIS EQUIPMENT MORTGAGE, dated as of September 22, 1975, is executed by North American Car Corporation (the "Company") and The First National Bank of Chicago (the "Bank") in order to induce the Bank to extend credit to the Company on the terms and subject to the conditions set forth in the Loan Agreement (the "Loan Agreement") dated September 22, 1975 between the Company and the Bank.

THEREFORE, in consideration of the Premises, the Company agrees as follows:

SECTION 1. Definition of Equipment Mortgage. In order to secure prompt payment of the principal and interest of the Note (as defined in the Loan Agreement), whether now or hereafter outstanding, and faithful performance and observance of the Company of all its agreements and covenants contained in the Loan Agreement, this Equipment Mortgage, and all other documents executed in connection with the Loan Agreement (herein collectively called the "Indebtedness"), the Company does hereby pledge, mortgage, and grant a security interest unto the Bank in and to the following:

(a) All right, title and interest of the Company in the property described in Schedule I hereto (which property, together with all substitutions, replacements, modifications and accessions thereto, is hereinafter called the "Equipment").

(b) All proceeds (including, without limitation, insurance and indemnity payments) from the sale or loss or other dispositions of the Equipment to the extent that the Company is entitled to such.

(c) All rights, claims, causes of action, if any, which the Company may have against any manufacturer of the Equipment, or against any lessee or sublessee of the Company as lessor, and the proceeds of such rights, claims and causes of action.

All such rights, claims, causes of action and proceeds together with the Equipment hereinafter sometimes collectively called "Collateral".

When and only when the Indebtedness has been paid in full, and when the obligations of the Bank to advance funds to the Company has terminated, and all the Company's obligations herein contained shall have been performed, absolute right to possession of, title to and property in the Equipment shall pass to and vest in the Company.

SECTION 2. Representations and Warranties. The Company represents and warrants:

(a) That it is the owner of all Equipment that there will be no encumbrances or liens of any kind or character against any of said Equipment except as disclosed on said Schedule I, and that it has good right and lawful authority to mortgage the same.

(b) The Company will keep at all times all and every part of the Equipment free and clear of all impositions (other than presently existing encumbrances disclosed on Schedule I hereto) which might in any way affect the security interest of the Bank or result in a lien upon any part of the Equipment, provided, however, that the Company shall be under no obligation to pay any impositions where the nonpayment thereof does not, in the opinion of the Bank, adversely affect the title, lien property or rights of the Bank in or to the Equipment or otherwise under this Equipment Mortgage. If any impositions for which the Company is liable as aforesaid shall have been charged or levied against the Bank directly and paid by the Bank, the Company shall reimburse the Bank upon presentation of an invoice therefor, and any amounts so paid by the Bank shall be secured by and under this Equipment Mortgage.

SECTION 3. Maintenance and Repair; Casualty Occurrences; Release of Equipment. The Company agrees that, at its own cost and expenses, it will maintain and keep or cause others to maintain and keep all the Equipment in good order and repair.

In the event of the loss, for any reason, damage, theft or destruction of any of the Equipment or of the obsolescence of any of the Equipment (herein a "Casualty Occurrence") the Company shall pay to the Bank an amount equal to the share to which the Company is entitled of the Casualty Value of such Equipment for application against the Note, upon the installments thereof in the inverse order of their maturity and, upon such payment and upon the written request of the Company, the Bank shall release such Equipment from the lien of the Equipment Mortgage. Such payments to the Bank shall be made in multiples of \$100,000 and shall be required only if the aggregate amount of the Company's share of the Casualty Value of Equipment which has not been previously paid to the Bank is equal to or in excess of \$100,000. All such payments shall be made on an interest payment date as set forth in the Agreement. "Casualty Value" as used herein shall have the same meaning as set forth in Exhibit C to the Lease dated February 13, 1973 between the Company and Ringsby Truck Lines, Inc., as to Equipment subject to such Lease and as set forth in Section 7 of the Lease between the Company and Chicago, Rock Island, and Pacific Company dated March 31, 1973 as to the Equipment such to such Lease.

SECTION 4. Reports and Inspections. The Bank shall have the right to inspect the Equipment and the records with respect thereto at such reasonable times as the Bank may request; provided, however, that the Company shall not be required to assemble the Collateral for such inspection unless there exists an Event of Default hereunder. The

Company shall provide such other information regarding the condition and state of repair of the Equipment as the Bank may reasonably request.

SECTION 5. Marking of Equipment. The Company will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each item of Equipment which consists of railroad rolling stock in letters not less than one inch in height:

TITLE TO THIS CAR IS VESTED IN A TRUSTEE UNDER THE TERMS OF AN EQUIPMENT TRUST AGREEMENT RECORDED UNDER SECTION 20(c) OF THE INTERSTATE COMMERCE ACT.

or other appropriate words stenciled on the item of Equipment with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Bank's security title to and property in the Equipment and its rights hereunder.

Once the Equipment is so marked the Company will not permit the identifying number of any item of Equipment to be changed.

SECTION 6. Compliance with Laws and Rules. During the term of this Equipment Mortgage, the Company will comply, and will cause every lessee or user of the Equipment to comply to the extent provided in the Leases of such Equipment, with all rules, regulations, orders and laws pertaining to the use, operation, or maintenance of the Equipment existing in the jurisdictions in which its or such lessees' operations involving the Equipment may extend; provided, however, that the Company, in good faith, may contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Bank adversely affect the property or rights of the Bank under this Equipment Mortgage.

SECTION 7. Possession and Use. So long as an Event of Default specified in Article 10 hereof shall not have occurred and be continuing, the Company shall be entitled to the possession and use of the Equipment, but only subject to all of the terms and conditions of this Equipment Mortgage. The Company may also lease the Equipment to any railroad company or other corporation or entity, provided, however, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Bank under this Equipment Mortgage and (ii) the Company shall not lease, assign or permit any items of Equipment to regular service in any area which the lien of this Mortgage is not perfected as to such Equipment.

SECTION 8. Indemnities and Warranties. The Company agrees to indemnify, protect and hold harmless the Bank from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, penalties and interest, arising out of or as the result of the

entering into or the performance of this Equipment Mortgage, the retention by the Bank of security title to the Equipment, the use, operation, condition, purchase, delivery, rejection, storage or return of any of the items of Equipment, any accident, in connection with the operation, use, condition, possession, storage or return of any of the items of Equipment resulting in damage to property or injury or death to any person during the period when security title thereto and the Bank's lien remain in the Bank or the transfer of title to the Equipment by the Bank pursuant to any of the provisions of this Equipment Mortgage. This covenant of indemnity shall continue in full force and effect notwithstanding the full satisfaction of the Indebtedness and the release and the conveyance of security title to the Equipment to the Company, or the termination of this Equipment Mortgage in any manner whatsoever. The Bank shall give notice to the Company of claim arising hereunder and the Company shall have the right to take up and defend any such claim.

The Company will bear the responsibility for and risk of and shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any item of Equipment or all the Equipment.

The Company agrees to indemnify, protect and hold harmless the Bank from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company, its assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full satisfaction of the Indebtedness and the release and the conveyance of security title to the Equipment to the Company, or the termination of this Equipment Mortgage in any manner whatsoever.

SECTION 9. No Set-off. The rights of the Bank to payment of the Indebtedness as well as any other rights hereunder shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of breach of any warranty with respect to the Equipment, any other indebtedness or liability at any time owing to the Company or any insolvency, bankruptcy, reorganization or similar proceedings by or against the Company. The Company hereby waives, to the extent permitted by applicable law, any and all rights which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Equipment Mortgage, except in accordance with the express terms hereof.

SECTION 10. Defaults. The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

(a) There shall occur an Event of Default under Section 9 of the Loan Agreement; or

(b) The Company shall fail to perform any agreement under this Equipment Mortgage within 20 days after notice from the Bank; or

(c) Any party (other than the Company or currently existing lessees) shall have a presently - exercisable right to repossess or take possession of the Equipment.

(d) Any representation made to any bank in connection with this Equipment Mortgage shall be materially false.

SECTION 11. Remedies. In case the Bank shall demand possession of the Equipment pursuant to this Equipment Mortgage, the Bank may designate some premises for the delivery of the Equipment to the Bank, and the Company shall, at its own expenses, forthwith cause the Equipment to be detached, assembled and shall arrange for such Equipment to be moved to such point and shall there deliver the Equipment to the Bank. It is understood and agreed that the rights of the Bank hereunder are subject to the rights of the lessees of the Equipment.

This Agreement to deliver the Equipment as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court having jurisdiction in the premises, the Bank shall be entitled to a decree against the Company requiring specific performance hereof. The Company hereby expressly waives any and all claims against the Bank or its agents for damages of whatever nature in connection with any retaking of any item of Equipment in any manner.

At any time during the continuance of an Event of Default, the Bank, with or without retaking possession thereof, at its election and upon reasonable notice to the Company, and other persons to whom the law may require notice of the time and place, may, sell the Equipment, or any part thereof, free from any and all claims of the Company, or any other party claiming from, through or under the Company at law or in equity, at public or private sale and with or without advertisement as the Bank may determine.

Any sale hereunder may be held or conducted at Chicago, Illinois, at such time or times as the Bank may specify (unless the Bank shall specify a different place or places, in which case the sale shall be held at such place or places as the Bank may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Bank may determine. The Company shall be given written notice of such sale not less than ten days prior thereto by telegram or registered mail addressed as provided in Section 17 hereof. If such sales shall be a private sale, it shall be subject to the rights of the Company to purchase or provide a purchaser, within

ten days after notice of the proposed sale price, at the same price offered by the intended purchaser or a better price. The Bank may bid for and become the purchaser of the Equipment, or any of it, so offered for sale. In the event that any Bank shall be the purchaser thereof, it shall not be accountable to the Company upon a subsequent disposition of the Equipment.

If, as provided in this Section 11, the Bank shall exercise any of the powers conferred by this Equipment Mortgage, all payments made by the Company to the Bank hereunder and the proceeds of any judgment collected from the Company by the Bank hereunder, and the proceeds of every sale or lease by the Bank hereunder of any of the Collateral, together with any other sums which may then be held by the Bank under any of the provisions hereof, shall be applied to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Bank in accordance with the provisions of this Equipment Mortgage and (b) of the Indebtedness.

Each and every power and remedy hereby specifically given to the Bank shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time simultaneously and as often and in such order as may be deemed expedient by the Bank. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Bank in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Bank's rights or the Company's obligations hereunder. The Company's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's obligations or the Bank's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Bank under the remedies herein provided there shall remain any amount due to it under the provisions of this Equipment Mortgage or the Note, the Company shall pay the amount of such deficiency to the Bank upon demand, and, if the Company shall fail to pay such deficiency, the Bank may bring suit therefor and shall be entitled to recover a judgment therefor against the Company. If, after applying as aforesaid all sums realized by the Bank, there shall remain a surplus in the possession of the Bank, such surplus shall be paid to the Company.

The Company will pay all reasonable expenses, including attorneys' fees, incurred by the Bank in enforcing its remedies under the terms of this Equipment Mortgage or preparing to enforce its remedies after

a default hereunder. In the event that the Bank shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Bank may recover reasonable expenses, including reasonably attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 11, are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

SECTION 12. Applicable State Laws. Any provision of this Equipment Mortgage prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Equipment Mortgage. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Company to the full extent permitted by law, it being the intention of the parties hereto that this Equipment Mortgage shall be deemed to be a Chattel Mortgage and enforced as such.

Except as otherwise provided in this Equipment Mortgage, the Company, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more items of Equipment thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Bank's rights under this Equipment Mortgage and any and all rights of redemption.

SECTION 13. Recording. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Bank for the purpose of proper protection, to the satisfaction of counsel for the Bank, of its title to the Equipment and its rights under this Equipment Mortgage or for the purposes of carrying out the intention of this Equipment Mortgage; and the Company will promptly furnish to the Bank certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Bank.

Without limiting the generality of the foregoing paragraph the Company hereby agrees: (i) to cause this Equipment Mortgage to be filed pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, (ii) to cause the lien of this Bank to be noted on all documents of title covering Equipment, (iii) to file financing statements describing the Equipment and naming the Company as Secured Party and the Bank as Assignee with the Secretary of State of Illinois and the Recorder of Deed County, Nebraska, and (iv) to file financing

statements naming the Bank as Secured Party and the Company as Debtor with the Secretary of State of Illinois.

SECTION 14. Satisfaction of Mortgage and Termination of Mortgage. When the Note has been paid in full and all obligations of the Company hereunder, under the Note and under the Loan Agreement have been fulfilled, the Bank shall release the lien of this Equipment Mortgage with respect to the Collateral by an appropriate document.

SECTION 15. Payment of Expenses. The Company will pay for all the costs and expenses incident to this Equipment Mortgage and all reasonable costs and expenses in connection with the perfection of the Bank's lien upon the Equipment.

SECTION 16. Article Headings; Effect and Modifiacton of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Equipment Mortgage.

No variation or modification of this Equipment Mortgage and no waiver of any of its provisions or conditions shall be vaild unless in writing and signed by duly authorized representatives of the Bank and the Company.

SECTION 17. Notices. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

- (a) To the Company at: North American car Corporation
222 South Riverside Plaza
Chicago, Illinois 60606
Attention: V. P. - Finance
- (b) To the Bank at: The First National Bank of Chicago
One First National Plaza
Chicago, Illinois 60670
Attention: Division G

SECTION 18. Law Governing. The terms of this Equipment Mortgage and all rights and obligations hereunder shall be governed by the laws of Illinois.

SECTION 19. Counterparts. This Mortgage may be executed by the parties hereto individually, or in any combinations of the parties hereto, in several counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement.

SECTION 20. Execution. Although this Equipment Mortgage is dated as of September 22, 1975, for convenience the actual date or dates of execution hereby by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

[CORPORATE SEAL]

ATTEST:)

Richard E. Desiring
Asst. Sec.

[CORPORATE SEAL]

NORTH AMERICAN CAR CORPORATION
a Delaware corporation

By [Signature]
Title VP

THE FIRST NATIONAL BANK OF CHICAGO,
~~as agent on behalf of each of the~~
~~Banks and individually.~~

By Douglas F. Nelson
Title Asst. V.P.

STATE OF ILLINOIS)
) SS.:
COUNTY OF COOK)

On this 22nd day of September, 1975, before me personally appeared M. G. Lynch, to me personally known, who being by me duly sworn says that he is the Vice President of North American Car Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Larry Catalano
Notary Public

[SEAL]

My commission expires 6-30-79

STATE OF Illinois
COUNTY OF Cook

On this 22nd day of September, 1975, before me personally appeared Douglas F. Nelson, to me personally known, who being by me duly sworn says that he is the Assistant Vice President of The First Nat'l Bank of Chicago, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Malcolm K. Gane
Notary Public

[SEAL]

My commission expires

My Commission Expires Nov. 9, 1975

8059

SCHEDULE I TO EQUIPMENT MORTGAGE
ROCK ISLAND RAILROAD EQUIPMENT

<u>LESSEE'S CAR NUMBER</u>	<u>TOTAL NUMBER OF CARS</u>	<u>DESCRIPTION</u>
RI 36300-36399	100	70-ton, 50' Wide Door Boxcars with Double Pneumatic Bull- heads and End of Car Cushing.
RI 62500-62503 62505-62849	349	70-ton, 50' Wide Door Boxcars with Minium Belt Rails.
RI 34500-34599	100	100-Ton, 60' Wide Door Box- cars, with Double Pneumatic Bullheads and End of Car Cushing.
RI 13820-13869	50	100-Ton, 52' Covered Gondola Cars.
RI 132250-132301 132303-132463 132465-132488 132490-132491 132493-132749	496	100-Ton Triple Center Dump, 4,750 Cubic Foot Covered Hopper Cars.
RI 180000-180099	<u>100</u>	100-Ton, 52' Gondola Cars.
TOTAL:	1195	